

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**T.S., Appellant**

**and**

**U.S. POSTAL SERVICE, GENERAL MAIL  
FACILITY, Athens, GA, Employer**

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**Docket No. 19-0347  
Issued: July 9, 2019**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 3, 2018 appellant filed a timely appeal from July 31 and October 31, 2018 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the October 31, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish intermittent disability during the period April 10 through May 31, 2018 causally related to her accepted employment injury.

## **FACTUAL HISTORY**

On September 21, 2014 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral heel spurs due to excessive walking, prolonged standing, and moving heavy equipment while in the performance of duty. Following an initial denial by OWCP on December 30, 2014, OWCP accepted the claim for sprain of ligaments of the lumbar spine, right and left foot calcaneal spurs, plantar fascial fibromatosis, and other internal derangements of the left knee.

On June 18, 2018 appellant submitted a claim for compensation (Form CA-7) for intermittent periods of disability from April 10 to May 31, 2018. In attached time analysis forms (Form CA-7a), she indicated that she was claiming a total of 33.53 hours for physical therapy visits.

In a development letter dated June 26, 2018, OWCP informed appellant that it had received no evidence to support physical therapy visits for the period April 10 to May 31, 2018. It afforded her 30 days to provide documentation verifying treatment on the dates claimed.<sup>3</sup>

Appellant thereafter submitted treatment notes dated July 10 and 19, 2018 from Dr. Kamal C. Kabakibou, an attending Board-certified anesthesiologist, and Dr. FerozeYusufji, an attending Board-certified orthopedic surgeon.

By decision dated July 31, 2018, OWCP denied appellant's claim for 33.53 intermittent hours of monetary compensation for the period April 10 to May 31, 2018. It noted that she had not submitted any evidence to support medical treatment for the claimed hours.

On August 28, 2018 appellant requested reconsideration. The only medical evidence subsequently submitted were treatment notes dated August 7, 17, and 30, 2018 from Dr. Kabakibou and Dr. Yusufji.

By decision dated September 11, 2018, OWCP denied modification of the July 31, 2018 decision. It noted that appellant had submitted no evidence to substantiate medical treatment for the claimed period.

On October 4, 2018 appellant requested reconsideration. She submitted form reports indicating that she had received treatment on April 10, 12, 17, 19, and 26, and May 1, 8, 10, 16,

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<sup>3</sup> By decision dated June 26, 2018, OWCP awarded appellant 27.36 hours of compensation for medical treatment from December 5, 2017 to March 8, 2018. It denied 7.6 hours compensation for claimed medical treatment on February 6, 13, and 20, 2018. Appellant subsequently submitted verification of these visits, and on September 11, 2018 OWCP paid compensation for the additional claimed 7.6 hours.

24, and 31, 2018 for a total of 28.68 hours, by either Dr. Zouheir Shama, a general surgeon, Dr. Erica Levy, a chiropractic physician, or Dr. Chris Bowe, a chiropractic physician. Appellant also submitted additional reports from Dr. Kabakibou and Dr. Yusufji dated August 23 to October 5, 2018.

By decision dated October 31, 2018, OWCP denied modification of its prior decisions.

### **LEGAL PRECEDENT**

OWCP procedures provide that wages lost for compensable medical examinations or treatment may be reimbursed.<sup>4</sup> A claimant who has returned to work following an accepted injury or illness may need to undergo examination or treatment and such employee may be paid compensation for wage loss while obtaining medical services and for a reasonable time spent traveling to and from the medical provider's location.<sup>5</sup> Wage loss is payable only if the examination, testing, or treatment is provided on a day which is a scheduled workday and during a scheduled tour of duty. Wage-loss compensation for medical treatment received during off-duty hours is not reimbursable.<sup>6</sup> The evidence should establish that a claimant attended an examination or treatment for the accepted work injury on the dates claimed in order for compensation to be payable.<sup>7</sup> For a routine medical appointment, a maximum of four hours of compensation may be allowed. However, longer periods of time may be allowed when required by the nature of the medical procedure and/or the need to travel a substantial distance to obtain the medical care. The claims for wage loss should be considered on a case-by-case basis.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish disability on May 17 or 22, 2018. The Board further finds that the case is not in posture for decision regarding the claimed April 10, 12, 17, 19, and 26, and May 1, 8, 10, 16, 24, and 31, 2018 dates of disability.

As the record contains no medical evidence establishing that appellant underwent medical treatment on May 17 or 22, 2018, the Board finds that she is not entitled to wage-loss compensation on those two days.

However, with her October 4, 2018 reconsideration request, appellant submitted form reports indicating that she sought treatment on April 10, 12, 17, 19, and 26, and May 1, 8, 10, 16, 24, and 31, 2018. OWCP did not acknowledge receipt of this evidence.

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Wages Lost for Medical Examination or Treatment*, Chapter 2.901.19 (February 2013).

<sup>5</sup> *Id.* at Chapter 2.901.19.a; see *E.W.*, Docket No. 17-1988 (issued January 28, 2019).

<sup>6</sup> *Id.* at Chapter 2.901.19.a(2).

<sup>7</sup> *Id.* at Chapter 2.901.19.a(3).

<sup>8</sup> *Id.* at Chapter 2.901.19.c.

It is well established that OWCP must review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.<sup>9</sup> As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim, which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>10</sup>

Accordingly, the case is not in posture for a decision regarding the claimed April 10, 12, 17, 19, and 26, and May 1, 8, 10, 16, 24, and 31, 2018 dates of disability. The case will be remanded for consideration of the evidence appellant submitted with her October 4, 2018 reconsideration request. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish disability on May 17 or 22, 2018. The Board also finds that the case is not in posture for decision regarding the claimed April 10, 12, 17, 19, and 26, and May 1, 8, 10, 16, 24, and 31, 2018 dates of disability.

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<sup>9</sup> *William A. Couch*, 41 ECAB 548 (1990); *N.L.*, Docket No. 17-1058 (issued February 8, 2018).

<sup>10</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 31, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further proceedings pursuant to this decision.

Issued: July 9, 2019  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board